

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-SE-166
XLNT Idea, Inc.	)	NAL/Acct. No. 200932100004
San Diego, California	)	FRN # 0018234369

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 31, 2008**

**Released: November 4, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find XLNT Idea, Inc. (“XLNT Idea”) is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The apparent violations involve marketing unauthorized digital devices in the United States.

**II. BACKGROUND**

2. The Spectrum Enforcement Division (“Division”) of the Enforcement Bureau received a complaint alleging that XLNT Idea was marketing the Nexis 100AP AutoPrinter, the Nexis 100AP Publisher, and the Xi440 CD/DVD Printer in the United States without the appropriate labels as required in Section 15.19 of the Rules.<sup>3</sup> The complaint further alleged that the equipment may not have been tested, or otherwise determined to comply with the conducted and radiated emission limits in Sections 15.107 and 15.109 of the Rules<sup>4</sup> prior to marketing. The Division subsequently began an investigation. The investigation established that XLNT Idea was either marketing, or had marketed through its website, the devices mentioned in the complaint. The product descriptions of the devices indicated that all three function as personal computer peripherals.<sup>5</sup>

3. On February 11, 2008, the Division issued a letter of inquiry (“LOI”) to XLNT Idea.<sup>6</sup> On March 12, 2008, XLNT Idea responded to the LOI.<sup>7</sup> In its response, XLNT Idea acknowledges that it

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> 47 C.F.R. § 15.19.

<sup>4</sup> 47 C.F.R. §§ 15.107 and 15.109.

<sup>5</sup> Marketing materials included minimum hardware and software specifications that a PC would need in order to send output to the printer/publishers.

<sup>6</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to XLNT Idea, Inc. (February 11, 2008).

<sup>7</sup> See Letter from XLNT Idea, Inc., to Gabriel Collazo, Spectrum Enforcement Division, Enforcement Bureau (March 12, 2008) (“LOI Response”).

manufactures the Nexis 100AP AutoPrinter, the Nexis 100AP Publisher, and the Xi440 CD/DVD Printer at its facility in San Diego, California and markets all three devices for both residential and commercial use.<sup>8</sup> XLNT Idea states that it began marketing the Nexis 100AP AutoPrinter and the Nexis 100AP Publisher in January 2006 and began marketing the Xi440 CD/DVD printer in August 2005.<sup>9</sup> XLNT Idea maintains that until receiving the LOI, it was unaware of the FCC technical and labeling requirements applicable to its products. XLNT concedes that due to its ignorance of the specific FCC requirements, it distributed a number of units of the three products prior to testing the products for FCC compliance.<sup>10</sup> XLNT Idea indicates that after receiving the LOI, it ceased further shipments of its devices and did not resume shipments until after it had completed testing of the devices.<sup>11</sup> Finally, XLNT Idea asserts that the testing demonstrates that the devices meet the FCC's conducted and radiated emission limits for both Class A and Class B digital devices<sup>12</sup> and that it has now satisfied the Declaration of Conformity requirements for these devices.<sup>13</sup>

### III. DISCUSSION

#### A. Marketing of Unauthorized Devices

4. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(2) of the Commission’s implementing regulations provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

Pursuant to Section 15.101(a) of the Rules,<sup>14</sup> unintentional radiators<sup>15</sup> that function as digital computer

<sup>8</sup> *Id.* at 2-3, 7-8, 12.

<sup>9</sup> *Id.* at 2, 6, 11.

<sup>10</sup> *Id.* at 5, 10, 14.

<sup>11</sup> *Id.* at 3, 8.

<sup>12</sup> See 47 C.F.R. § 15.3(h) and (i).

<sup>13</sup> LOI Response at 4-6, 8-10, 13-14. XLNT Idea notes that because the Nexis 100AP AutoPrinter and Nexis 100AP Publisher are identical except that the Nexis 100AP AutoPrinter cannot burn cds or dvds, it was only necessary to test the Nexis 100AP Publisher and the tests results for the Nexis 100AP Publisher also demonstrate compliance of the Nexis 100AP AutoPrinter. *Id.* at 4. The test report covering the Nexis 100AP AutoPrinter and Nexis 100AP Publisher was dated February 28, 2008. The test report for the Xi440 CD/DVD Printer was dated March 8, 2008.

<sup>14</sup> 47 C.F.R. § 15.101(a).

<sup>15</sup> An unintentional radiator is “[a] device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signal by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction.” 47 C.F.R. § 15.3(z).

peripherals, and are marketed for use in a residential environment or for use by the general public,<sup>16</sup> such as XLNT Idea's Nexis 100AP AutoPrinter, Nexis 100AP Publisher, and Xi440 CD/DVD Printer, are required to be approved prior to marketing through either the Declaration of Conformity procedures described in Sections 2.1071-2.1077 of the Rules,<sup>17</sup> or by the Certification procedures described in Sections 2.1031-2.1060 of the Rules.<sup>18</sup> In addition, unintentional radiators are required to comply with the conducted and radiated emissions specified in Sections 15.107 and 15.109 of the Rules.<sup>19</sup> As the manufacturer, XLNT Idea is the party responsible for assuring that these devices are compliant with all applicable technical and administrative requirements.<sup>20</sup>

5. XLNT Idea admits that it marketed and sold units of the Nexis 100AP AutoPrinter and the Nexis 100AP Publisher for slightly over 24 months before a sample representative of both units was tested in February 2008 to meet the Declaration of Conformity requirements. It also admits that it marketed and sold units of the Xi440 CD/DVD Printer for approximately 30 months before it was tested in March 2008 to meet the Declaration of Conformity requirements. We, accordingly, find that the Nexis 100AP AutoPrinter, the Nexis 100AP Publisher, and the Xi440 CD/DVD Printer were marketed in the United States prior to authorization. Thus, we find that XLNT Idea apparently willfully<sup>21</sup> and repeatedly<sup>22</sup> violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by marketing unauthorized digital devices in the United States.

## **B. Proposed Forfeiture**

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>23</sup> In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>24</sup>

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<sup>16</sup> See 47 C.F.R. § 15.3(i).

<sup>17</sup> 47 C.F.R. §§ 2.1071-2.1077.

<sup>18</sup> 47 C.F.R. §§ 2.1031-2.1060.

<sup>19</sup> See 47 C.F.R. §§ 15.107 and 15.109.

<sup>20</sup> See 47 C.F.R. § 2.909(b).

<sup>21</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>22</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>23</sup> 47 U.S.C. § 503(b).

<sup>24</sup> 47 U.S.C. § 503(b)(2)(E).

7. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*.<sup>25</sup> Section 503(b)(6) does not, however, bar the Commission from assessing whether XLNT Idea's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>26</sup> Thus, while we may consider the fact that XLNT Idea's conduct has continued over a period that began in August 2005, the forfeiture amount we propose herein relates only to XLNT Idea's apparent violations that have occurred within the past year.

8. Pursuant to the Commission's *Forfeiture Policy Statement*<sup>27</sup> and Section 1.80(b)(4) of the Rules,<sup>28</sup> the base forfeiture amount for the marketing of unauthorized or non-compliant equipment is \$7,000. As noted above, XLNT Idea marketed three devices prior to authorization: the Nexis 100AP AutoPrinter, the Nexis 100AP Publisher, and the Xi440 CD/DVD Printer. We note, however, that the Nexis 100AP AutoPrinter and the Nexis 100AP Publisher are identical except that the Nexis 100AP Publisher can burn cds and dvds; therefore, testing and authorization of the Nexis 100AP Publisher is sufficient to demonstrate compliance of the Nexis 100AP AutoPrinter.<sup>29</sup> Thus, we find that XLNT Idea marketed two distinct unauthorized devices prior to authorization. XLNT Idea's marketing of each of these devices is a separate continuing violation.<sup>30</sup> Accordingly, we find that a total proposed forfeiture in the amount of \$14,000 is warranted for the marketing of unauthorized devices in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>31</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>32</sup> XLNT Idea **IS** hereby **NOTIFIED** of its **APPARENT**

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<sup>25</sup> 47 U.S.C. § 503(b)(6).

<sup>26</sup> See 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005).

<sup>27</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>28</sup> 47 C.F.R. § 1.80(b)(4).

<sup>29</sup> See n. 13, *supra*.

<sup>30</sup> See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), *forfeiture ordered*, 22 FCC Rcd 1040 (2007), *response pending*; *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, 19 FCC Rcd 24509 (2004) (both finding that the marketing of each separate model of unauthorized equipment constitutes a separate violation).

<sup>31</sup> 47 U.S.C. § 503(b).

<sup>32</sup> 47 C.F.R. § 0.111, 0.311 and 1.80.

**LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

10. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, XLNT Idea, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. XLNT Idea will also send electronic notification on the date said payment is made to Gabriel Collazo at [Gabriel.Collazo@fcc.gov](mailto:Gabriel.Collazo@fcc.gov) and Neal McNeal at [Neal.McNeal@fcc.gov](mailto:Neal.McNeal@fcc.gov).

12. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent first class and certified mail to Chalapathi Rao Atluri, Chief Executive Officer, XLNT Idea, Inc., 6262 Ferris Sq., San Diego, CA 92121, and by facsimile and first class mail to its counsel, Michael J. Schrier, Esq., Bell, Boyd & Lloyd, LLP, 1615 L Street, N.W., Suite 1200, Washington, DC 20036-5610.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau